

Supplemental Environmental Projects Policy

Introduction

The California Air Resources Board (ARB) coordinates the state's efforts to achieve and maintain health-based federal and state air quality standards in order to protect the public from exposure to ozone, particulate matter, and toxic air contaminants, and address climate change. Among other programs to carry out these efforts, ARB has a comprehensive enforcement program that includes the ability to issue citations, impose administrative penalties, refer cases to prosecutors for civil and criminal prosecution, and to settle cases.

A violator is a company or individual that has failed to comply with ARB's rules and regulations. Many violators agree to a settlement. As a condition of settlement, ARB requires the violator to achieve and maintain compliance with air quality laws and regulations and to pay a monetary civil penalty. ARB may allow the violator to satisfy part of the monetary penalty by voluntarily offsetting a portion of their civil penalty by performing or funding one or more Supplemental Environmental Projects (SEP or Project). For purposes of this policy, SEPs are projects not otherwise required by law or regulation that benefit air quality by reducing emissions, reducing exposure to air pollution, or preventing future air quality violations.

If ARB approves a SEP as part of a settlement, the settlement agreement will provide that the violator agrees to conduct the SEP and ARB agrees to offset a portion of the penalty for SEP implementation.

This policy meets the requirements of Public Resources Code section 71118, which requires each of California Environmental Protection Agency's (CalEPA) boards, departments and offices that have enforcement authority to establish SEP policies that benefit disadvantaged communities. Specifically, Public Resources Code section 71118 requires ARB's SEP policy to include:

- A public process to solicit potential SEPs from disadvantaged communities.
- Allowing the amount of a SEP to be up to 50 percent of the enforcement action.
- Developing an annual list of SEPs that may be selected to settle a portion of an enforcement action.
- Consideration of the relationship between the location of the violation and the location of the proposed SEP.

ARB Policy on Implementation of Supplemental Environmental Projects

This policy provides ARB's process for selection of SEPs and how ARB will oversee implementation of SEPs that are included in settlement agreements. ARB will annually develop a list of eligible SEPs through a public process, make this list available on ARB's website, and provide this list to CalEPA at least on an annual basis.

SEP Selection Criteria

A SEP must meet the following criteria in order to be eligible for funding:

- Furthers ARB's purpose of cleaning up the air by
 - a) reducing the risk burden posed to public health,
 - b) preventing future air quality problems beyond those addressed in current air quality programs, or
 - c) improving the environment,
- Has a nexus to the violation either through location (i.e., the SEP furthers ARB's purpose of cleaning up the air in the specific community where the violation occurred) or through pollutant (i.e., the SEP furthers ARB's purpose of cleaning up the air by addressing the pollutants involved in the violation),
- Does not benefit the violator,
- Goes beyond regulatory requirements that are imposed by a federal, state, or local entity, and
- Demonstrates that the proposal is technically, economically and legally feasible.

ARB prefers SEPs that meet one or more of the following criteria:

- Provide direct emissions or exposure reductions,
- Benefit disadvantaged communities,
- Provide community benefits in addition to furthering ARB's purpose of cleaning the air, and/or
- Address multiple environmental problems (such as SEPs that have water, soil, or other environmental benefits in addition to air benefits).

Up to 50% of the penalty amount negotiated in a settlement may be offset with a SEP.

SEP Categories

A SEP shall fall into one or more of the following categories:

- Pollution Prevention or Reduction – Preventing or reducing air pollution or greenhouse gas emissions.
- Environmental Restoration and Protection – Improve or restore the quality of the environment.

- Environmental Education or Compliance Training – Provide assistance to educators, schools, and community groups to conduct training and public awareness campaigns to the public and the regulated community.
- Community Monitoring – Provide tools, such as surveillance and monitoring equipment, to be used by trained members of the public for data acquisition and enhancement of existing air quality monitoring stations.
- Trans-Boundary – Provide support for projects that provide a direct benefit to Californians in and around the border environment with other states and Mexico.
- Other – Other acceptable SEPs can be considered on a case-by-case basis. In limited circumstances, the Executive Officer may make an exception to this policy if there is an extraordinary benefit to human health or the environment that outweighs the considerations used in developing this policy.

Responsibilities of Violators

Through the settlement process, the violator may agree to implement a SEP. The violator may choose one of the following options, subject to ARB's approval:

- Design and implement a SEP
 - If the violator designs and implements a SEP,
 - ARB must approve the SEP designed by the violator,
 - The violator is responsible for ensuring the project is completed,
 - The portion of the settlement allocated to a SEP is treated as a suspended penalty that is waived upon project completion. If the SEP is not completed, the violator must pay the suspended penalty,
 - The violator is responsible for overseeing the project and reporting to ARB, including progress reports and a final report declaring the completion of the SEP, addressing how the expected project goals were met, and certifying post-project accounting of expenditures, and
 - ARB must approve the final report before the penalty is waived. If the SEP is only partially completed, ARB will determine the amount of the penalty waived.
- Select a SEP from the ARB list and deposit money in a SEP administrator account
 - The SEP is considered complete and the penalty waived once the violator has deposited money in the SEP administrator account.
 - The SEP recipient is responsible for ensuring SEP completion.
- Deposit money in a SEP administrator account
 - The SEP is considered complete and the penalty waived once the violator has deposited money in the SEP administrator account.

- The SEP administrator is responsible for selecting a suitable SEP from the ARB list consistent with this policy.
- The SEP recipient is responsible for ensuring SEP completion.

Responsibilities of SEP Administrators

A SEP administrator is a party contracted with ARB to administer a SEP or group of SEPs. SEP administrators are responsible for:

- Managing financial contributions to SEPs by:
 - Collecting and managing SEP payments received from violators,
 - Tracking funds by location of violation and type of pollutant,
 - Tracking funds allocated for specific SEPs,
 - Disbursing funds to SEPs, and
 - Tracking and accounting for disbursed funds,
- Ensuring that any selected SEP meets the requirements and criteria defined in this policy,
- Providing tracking, oversight, and reporting of SEPs to ARB, including:
 - Monitoring the timely and successful completion of each SEP,
 - Requesting and maintaining Project accounting from SEP recipient,
 - Notifying ARB if a SEP recipient is not meeting proposed schedule or milestones,
 - Providing quarterly progress reports and a final completion report for each SEP, including an accounting of expenditures and describing the overall environmental and community benefits of the project, in order for ARB to declare a SEP complete, and
 - Providing an annual report to ARB that describes funding received, funding expended, remaining available funding, SEPs funded, and any other information requested by ARB.